

## **REMARKS**

Claims 1, 8, 9, 11-13, and 17 have been amended, and claim 7 has been cancelled. Accordingly, claims 1-6, and 9-21 remain pending.

The Examiner has objected to the specification with respect to a number of typographical errors, which have been corrected herein.

The drawings have been objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they do not include a reference symbol T2 for Fig. 2a as mentioned in the specification. A replacement sheet for Fig. 2a has been provided.

The drawings and specification are object to as failing to comply with 37 C.F.R. 1.84(p)(5) because the reference characters that are not mentioned in the description. Replacement sheets for Figs. 3b, 5a, 7, and 11f, on which the reference symbols, noted by the Examiner, have been removed, are herein provided. However, it is noted that the reference symbol 524 for Fig. 5a appears in the specification on page 42, line 1 and such reference symbol remains on Fig. 5a. It is respectfully submitted that the drawings now comply with 37 C.F.R. 1.84(p)(5).

The Examiner rejected claims 1-14 under 35 U.S.C. §101 as being directed towards non - statutory subject matter. Specifically, the Examiner asserts that the steps of obtaining scatterometry overlay data and obtaining imaging overlay data is an abstraction without tangible result. Claim 1 has been amended to recite “determining and storing scatterometry overlay data...” and “determining and storing imaging overlay data...” to overcome this subject matter rejection. It is respectfully submitted that storing overlay data is a tangible result that could be used for any number of practical purposes, such as correction of lithographic process and/or tool. Accordingly, it is submitted that the pending claims comply with 35 U.S.C. §101.

The Examiner has indicated that claim 8 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Although claim 1 has been rewritten to include the limitations of the intervening claim 7 (i.e., “selecting the first target set from which the scatterometry overlay data is determined and selecting the second target set from which the imaging overlay data is determined”), claim 1 includes only a subset of the limitations of claim 8. Specifically, claim 1 recites “wherein the selections are based on a criteria selected from a relative performance or a relative speed of the scatterometry overlay metrology or the imaging overlay metrology.” The Examiner has indicated that the limitations “wherein the selections are based on a criteria selected from a relative performance or a relative speed of the scatterometry overlay metrology or the imaging overlay metrology” of

original claim 8 as combined with intervening claim 7 and base claim 1 are distinguishable over the cited art. It is also respectfully submitted that the cited references fail to teach or suggest “wherein the selections are based on a criteria selected from a relative performance or a relative speed of the scatterometry overlay metrology or the imaging overlay metrology.” Accordingly, it is respectfully submitted that claim 1 is patentable over the cited art.

The Examiner rejected claims 1, 6, 7, 18, 19, and 20 under 35 U.S.C. §102(e) as being anticipated by Yang et al. (U.S. Patent No. 6,982,793). The Examiner has also rejected claim 21 under 35 U.S.C. §103(a) as being unpatentable over Yang et al. in view of Niu et al. (U.S. Patent No. 6,699,624). The Examiner’s rejections are respectfully traversed as follows.

The Examiner’s rejections of the dependent claims are also respectfully traversed. However, to expedite prosecution, all of these claims will not be argued separately. Claims 2-6 and 8-21 each depend directly or indirectly from independent claim 1, therefore, are respectfully submitted to be patentable over cited art for at least the reasons set forth above with respect to claim 1. Further, the dependent claims require additional elements that when considered in context of the claimed inventions further patentably distinguish the invention from the cited art.

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,  
BEYER WEAVER & THOMAS, LLP

/Mary R. Olynick/  
Mary R. Olynick  
Reg. 42,963

P.O. Box 70250  
Oakland, CA 94612-0250  
(510) 663-1100